A

JAMALUDDIN MOHD RADZI & ORS

v.

SIVAKUMAR VARATHARAJU NAIDU

B

HIGH COURT MALAYA, IPOH
BALIA YUSOF WAHI J
[ORIGINATING SUMMON NO: 24-237-2009]
8 APRIL 2009

C ***CIVIL PROCEDURE:*** *Striking out - Application to strike out action - Plaintiffs seeking declaration that they were still members of Perak State Legislative Assembly - Whether frivolous and vexatious and an abuse of process of court - Complex and multiple issues to be determined - Whether not a plain and obvious case to be struck out - Rules of the High Court* D *1980, O. 18 r. 19(1)(b), (d)*

CIVIL PROCEDURE: *Parties - Intervention - Application to intervene in proceeding - Failure by interveners to show how their rights against, or liabilities to, any party in proceeding would be directly affected by any* E *order that court would make in proceeding - Whether application ought to be dismissed*

The three plaintiffs were elected as the Ahli Dewan Undangan Negeri Perak for the constituencies of Behrang (N59), Changkat Jering (N14) and Jelapang (N31) respectively. The defendant, the F Speaker of the Dewan Undangan Negeri Perak ('Speaker'), then received three letters of resignation from the plaintiffs. Upon receipt of the letters, the defendant, in exercise of the powers vested in him as the Speaker, duly declared the plaintiffs' respective constituency vacant and, by letters dated 2 and 4 G February 2009, requested the Election Commission ('EC') to hold a by-election within 60 days in accordance with art. XXXVI of the Perak State Constitution ('PSC'). The EC, by letter dated 5 February 2009 to the defendant, rejected the defendant's request, stating that the three plaintiffs had not vacated their H respective state seats. The plaintiffs also denied tendering their letters of resignation to the defendant and filed an application seeking, *inter alia*, a declaration that they were still members of the Perak State Legislative Assembly ('encl. 1'). Upon an application to intervene, the Suruhanjaya Pilihanraya was added into this I action as an intervener. Subsequently, the defendant filed an application to strike out encl. 1 under O. 18 r. 19(1)(b) and (d) of the Rules of the High Court 1980 ('RHC') ('encl. 6') on the

following grounds: (i) art. XXXIII of the PSC; (ii) para. 3 of the Schedule to the Legislative Assembly (Privileges) Enactment 1959 ('Enactment'); (iii) art. 72 of the Federal Constitution ('FC'); and (iv) abuse of process for non-compliance with O. 53 of the RHC. On the same day, another application to intervene by six other proposed interveners was also filed ('encl. 10').

Held (dismissing both encls. 6 and 10):

(1) The proposed interveners, on the facts, had not demonstrated to the court how their rights against, or liabilities to, any of the parties in this proceeding would be directly affected by any order that the court would make in the proceeding. The order sought by the plaintiffs in the instant case was a declaration as to their status as members of the Legislative Assembly. How the proposed interveners would be directly affected by that order was only best known to them; what their rights against, or liabilities to, any of the parties in the proceeding had not been shown before this court. Having failed to meet this prerequisite, the application to intervene in the proceeding was dismissed. *Pegang Mining Company Ltd v. Choong Sam & Ors* (foll). (para 11)

(2) Considering the factual matrix of this case, it was crystal clear that the issue for determination was the status of the plaintiffs as assemblymen/members of the Legislative Assembly. The defendant's act of declaring a casual vacancy to the Suruhanjaya Pilihanraya could not by any stretch of the imagination be a decision of disqualification taken by the Assembly under art. XXXIII of the PSC, which decision should be final, and neither was it made before the Assembly or any Committee under para. 3 of the Schedule to the Enactment. In that respect, art. 72(1) of the FC was inapplicable and, accordingly, the defendant's attempt to strike out the action on those grounds was doomed to failure. (para 18)

(3) A close scrutiny of this case showed that there were complex and multiple issues to be determined. The applicability of O. 53, O. 15 r. 16 (of the RHC) and s. 41 of the Specific Relief Act 1950, the interpretation of various Articles in the PSC, the FC and the Enactment, the issues of disqualification of the members of the Assembly and the immunity of the

Assembly were all matters that required adjudication by the court. This was certainly not a plain and obvious case that could be disposed off by way of O. 18 r. 19 of the RHC. In the upshot, the defendant's application was dismissed. (para 21)

Case(s) referred to:

Arab Malaysian Merchant Bank Bhd v. Dr Jamaludin Dato' Mohd Jarjis [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19 SC ***(refd)***

Awang Harun Ishak & Ors v. Kerajaan Negeri Kedah & Ors (Civil Appeal No: K-01-147-2006) ***(refd)***

Bandar Builders Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(foll)***

Bradlough v. Gosset [1884] 12 QBD 271 ***(refd)***

Dato Dr Hj Mohamad Haniffa Hj Abdullah & Ors v. Koperasi Doktor Malaysia Bhd And Ors & Another Appeal [2008] 3 CLJ 323 CA ***(refd)***

Fan Yew Teng v. Government of Malaysia [1976] 1 LNS 28 HC ***(dist)***

Government of Malaysia v. Lim Kit Siang A Nother Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 ***(refd)***

Lim Cho Hock v. Government of the State of Perak, Menteri Besar State of Perak and President Municipality of Ipoh [1980] 1 LNS 43 HC ***(refd)***

Lim Cho Hock v. Speaker Perak State Legislative Assembly [1979] 1 LNS 45 HC ***(dist)***

Pegang Mining Company Limited v. Choong Sam & Ors [1989] 2 MLJ 52 ***(foll)***

Pengiran Othman Shah Pengiran Mohd Yussof & Anor v. Karambunai Resorts Sdn Bhd & Ors [1996] 1 CLJ 257 CA ***(refd)***

Re Vernazza [1959] 2 All ER 200 ***(refd)***

Sanders Lead Co Inc v. Entores Metal Brokers Ltd [1984] 1 All ER 857 ***(refd)***

Seng Huat Hang Sdn Bhd v. Chee Seng & Co Sdn Bhd [1987] 1 MLJ 413 ***(refd)***

Tan Sri Osman Saat v. Mohamed Ismail [1982] 2 MLJ 177 ***(refd)***

Times Publishing Bhd & Ors v. S Sivadas [1984-1985] SLR 705 ***(refd)***

Tractors Malaysia Bhd v. Tio Chee Hing [1975] 1 LNS 133 ***(refd)***

Legislation referred to:

Federal Constitution, art. 72(1)

Rules of the High Court 1980, O. 15 rr. 6(2)(b), 16, O. 18 r. 19(1)(b), (d), O. 53

Specific Relief Act 1950, s. 41

Other source(s) referred to:

Erskine May's Parliamentary Practice, 20th edn, p 712

For the plaintiff - Firoz Husin Ahmad Jamaluddin (Dato' Hafarizam Harun, Syed Faisal Syed Abdullah, Abu Bakar As-Sidek, Badrul Hishah Abdul Wahap & Faisul Hilmy Ahmad Zambri with him)
For the defendant - Chan Kok Keong (Nga Hock Cheh & Leong Cheok Keng with him)
For the interveners - Ranjit Singh (Edmund Bon with him)
For the interveners Election Commission - Tan Sri Abdul Gani Patail PP (Tun Abd Majid Tun Hamzah, Dato' Kamaludin Md Said, Azizah Nawawi, Amarjeet Singh, Siti Salwa Musa & Suzana Atan with him)
Watching brief for Perak State Government - Ahmad Kamal Md Shahid; State Legal Advisor, Perak
Watching brief for Bar Council - Shan Theivanthiran (Lai Choe Ken with him)
Watching brief for DAP - Ng Mung Yin (En Kulasegaran & Augustin Anthony with him)

Reported by Suresh Nathan

JUDGMENT

Balia Yusof Wahi J:

Facts

[1] The three plaintiff's were duly elected as the Ahli Dewan Undangan Negeri Perak for the constituencies of Behrang (N59), Changkat Jering (N14),and Jelapang (N31) respectively.

[2] The defendant received letters of resignation duly signed by the plaintiffs and which were addressed to the defendant as the Speaker of the Dewan Undangan Negeri Perak. The dates of the three letters of resignation were as follows:

a) Letter of resignation by the 1st plaintiff: 30 January 2009

b) Letter of resignation by the 2nd plaintiff: 30 January 2009

c) Letter of resignation by the 3rd plaintiff: 3 February 2009

[3] Upon the receipt of the said 3 letters of resignation by the plaintiffs, the defendant in exercise of the powers vested in him as the Speaker of the Dewan Undangan Negeri Perak duly declared the plaintiffs' respective constituency vacant and by letters dated 2 February 2009 and 4 February 2009 the defendant has requested the Election Commission to hold a by election within 60 days in accordance with Article xxxvi of the Perak State Constitution.

[4] By a letter dated 5 February 2009 addressed to the defendant, the Election Commission rejected the defendant's request and to quote the wordings of the said letter "memutuskan bahawa ketiga-tiga kerusi tersebut iaitu N14 Changkat Jering, N59 Behrang dan N31 Jelapang masih disandang oleh ketiga-tiga Ahli DUN berkenaan yang telah memenangi kerusi-kerusi tersebut pada Pilihanraya Umum ke 12 yang lepas."

[5] The plaintiffs have denied that they have tendered their resignation and has also denied handing their letters of resignation to the defendant. The plaintiffs have filed encl. 1 asking for the following reliefs:

a) Suatu perisytiharan bahawa plaintif pertama masih lagi dan merupakan Ahli Dewan Undangan Negeri Perak Darul Ridzuan Kawasan Behrang (N59);

b) Suatu perisytiharan bahawa plaintif kedua masih lagi dan merupakan Ahli Dewan Undangan Negeri Perak Darul Ridzuan Kawasan Changkat Jering (N14);

c) Suatu perisytiharan bahawa plaintif ketiga masih lagi dan merupakan Ahli Dewan Undangan Negeri Perak Darul Ridzuan Kawasan Jelapang (N31)

d) Selanjutnya dan/atau secara alternatif, kerusi-kerusi Dewan Undangan Negeri Perak Darul ("state seats") untuk kawasan kawasan pilihanraya ("constituencies") Behrang N59 Changkat Jering N14 dan Jelapang N31 adalah tidak kosong ('empty') atau lapang ('vacant');

e) Ganti rugi teladan dan punitif yang akan ditaksirkan secara serta-merta;

f) Kos berbangkit dari dan bersampingan dengan permohonan ini hendaklah ditanggung oleh defendan dan dibayar serta-merta; dan

g) Lain-lain relif yang dianggap suaimanfaat oleh Mahkamah Yang Mulia ini.

Upon an application to intervene filed *via* encl. 4, the Suruhanjaya Pilihanraya was added into this action as an intervener on 5 March 2009. Subsequent to that, the defendant has filed an application to strike out *via* encl. 6 on 10 March 2009 and

another application to intervene by six other proposed interveners was also filed on the same day *via* encl. 10. Both encls. 6 and 10 are now for hearing.

The Intervenors Application

[6] Enclosure 10 is an application by six individuals seeking to intervene in the present proceeding. Enclosure 10 is supported by each of the applicants' affidavits in encls. 11, 12, 13, 14, 15 and 16. The first plaintiff has filed an affidavit in reply *via* encl. 18 while the second and third plaintiffs as well as the Suruhanjaya Pilihanraya (intervener) has chosen not to do so and prefer to submit only on the issues of law. The first three proposed interveners are members of the Perak EXCO while the other three are just voters in their respective constituencies and ordinary ratepayers. For the EXCO members it is contended that as a result of the so called "political crisis" in the state they have been stripped of their position as EXCO members resulting in the loss of position, privileges and emoluments. As for the ratepayer interveners, it is contended that they have lost their legitimate expectations to vote for another candidate who has the same aspirations and views with Pakatan Rakyat. It is further submitted by the counsel for the proposed interveners that the proceedings before this court has a direct impact on them and their rights and liabilities are directly affected by any order that the court may make in the proceedings between the parties to the present proceedings. More so in the case of the three EXCO members, who has now lost their privileges and emoluments which they enjoyed as EXCO members. In support of that contention the case of *Arab Malaysian Merchant Bank Bhd v. Dr Jamaludin Dato' Mohd Jarjis* [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19 has been cited before me to illustrate the point that where proprietary or pecuniary rights are directly affected, a person ought to be allowed to intervene in the matter. With the greatest of respect, I think learned counsel for the proposed interveners has misread or rather misapplied the case. It must be stressed that proprietary or pecuniary rights referred to by the court in that case must refer to proprietary or pecuniary rights of the proposed intervener as against any of the parties in the suit or proceeding and not just simply any loss of proprietary or pecuniary rights. The loss of their rights, privileges or the emoluments which they have enjoyed previously has nothing to do whatsoever with the order that this

court may make in respect of the litigating parties in this proceeding. The authority cited has no application to the facts and circumstances of the present case before me.

[7] Learned counsel for the proposed intervener has also cited the case of *Lim Cho Hock v. Government of the State of Perak, Menteri Besar State of Perak and President Municipality of Ipoh* [1980] LNS 43, *Tan Sri Osman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177, *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63. These cases illustrate the point on the issue of *locus standi* and to strengthen the argument, learned counsel has further informed this court that three of the proposed interveners have filed a writ for *quo warranto* in the Kuala Lumpur High Court as an indication that they have *locus standi* and therefore ought to be allowed to intervene in the present proceeding. In my considered view, the issue before me here is not one of *locus standi* but purely on the issue of whether or not the requirements of O. 15 r. 6 of the Rules of High Court 1980 has been met. The exercise of the court's discretion under the rule are guided by certain established principles. It does not mean that one who has a *locus standi* is automatically allowed to intervene in a matter. The rule requires some interest in the would be intervener which is in some way directly related to the subject matter of the action. A mere commercial interest in the outcome divorced from the subject matter of the action is not enough. There must be some direct interest in the subject matter (See: *Sanders Lead Co. Inc. v. Entores Metal Brokers Ltd* [1984] 1 All ER 857).

[8] Looking closely at the provisions of O. 15 r. 6(2)(b) of the Rules of the High Court 1980, one cannot miss the essence of that provision in that only a person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon will be allowed to intervene. Alternatively, the said rule requires the court to consider whether there is a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

[9] As to the first qualification, I do not see how the presence of the interveners in the action will ensure that all matters in dispute between the plaintiff, the defendant and the Suruhanjaya Pilihanraya (intervener) may be effectually and completely determined and adjudicated upon. The dispute between the opposing parties in this case can be effectually and completely determined and adjudicated upon without the proposed intervenors. As to the other alternative qualification, the Court of Appeal in *Dato Dr. Hj. Mohamad Haniffa Hj Abdullah & Ors. v. Koperasi Doktor Malaysia Bhd And Ors & Another Appeal* [2008] 3 CLJ 323 has held that "a party to an action must be a person who claims in that action some relief against another party to the action or against who some relief is claimed by another party to the action. There is no jurisdiction to add as a party to an existing action, a person by and against whom no relief which the court has jurisdiction to grant can be claimed". Going by this test one is still left to wonder what would be the relief claimed by the proposed interveners against the party to this proceeding or the relief claimed against them by a party in the proceeding.

[10] Of course one must not fail to refer to the celebrated case of *Pegang Mining Company Limited v. Choong Sam & Ors* [1989] 2 MLJ 52 the *locus classicus* on this subbject matter where Lord Diplock succintly summarised the test in the following words:

> A better way of expressing the test is will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action.

[11] In my considered view, the proposed interveners have not demonstrated to the court how their rights against or liabilities to any of the parties in this proceeding will be directly affected by any order which the court will make in the proceeding. The order sought by the plaintiffs in the instant case is a declaration as to their status as members of the Legislative Assembly. How the proposed interveners will be directly affected by that order is only best known to them. What their rights against or their liabilities to any of the parties in the proceeding has not been shown before this court. Having failed to meet this prerequisite, the application to intervene in the said proceeding is hereby dismissed. As to costs, since the Honorable Attorney General is prepared to forgo the same, only the plaintiff is allowed with costs to be taxed.

A **The Striking Out Application**

[12] The application to strike out the suit in encl. 1 is filed by the defendant. It is supported by an affidavit in encl. 7. The first plaintiff has filed an affidavit in reply on his own and on behalf of the second and third plaintiffs in encl. 32A while the Suruhanjaya Pilihanraya (the intervener) has chosen not to file any. The defendant's application is premised on O. 18 r. 19(1)(b) & (d) of the Rules of the High Court 1980 on being frivolous and vexatious and abuse of court process.

[13] At the very outset, the defendant is contending that in seeking for a declaration that they are still members of the Perak State Legislative Assembly, the plaintiffs are in facts challenging the validity of the defendant's action in declaring the seat in their respective constituencies vacant. By letters dated 2 February 2009 and 4 February 2009 addressed to the Suruhanjaya Pilihanraya (the intervener), the defendant had declared the three seats as vacant and has called for the Suruhanjaya Pilihanraya to hold a by election in accordance with the provisions of Article XXXV1 (5) of the Perak State Constitution. It is the contention of the defendant that this court action by the plaintiffs is misconceived and ought to be struck out on the grounds:

1) Article XXXIII of the Perak State Constitution.

2) Para 3 of the schedule to the Legislative Assembly (Privileges) Enactment 1959.

3) Article 72 of the Federal Constitution.

4) Abuse of process for non compliance with O. 53 RHC 1980.

[14] Article XXX111 of the Perak State Constitution stipulates that if any question arise whether a member of the Legislative Assembly has become disqualified, the decision of the Assembly shall be taken and shall be final. In support, learned counsel for the defendant relied on two authorities namely *Fan Yew Teng v. Government of Malaysia* [1976] 1 LNS 28 and *Lim Cho Hock v. Speaker Perak State Legislative Assembly* [1979] 1 LNS 45. Both authorities point to the conclusion that it is outside the jurisdiction of the court to deal with the subject matter of disqualification of a member of the House. The House is the final arbiter in any question arising as to whether a member of the House has become disqualified for membership.

[15] On para 3 to the Schedule of the Legislative Assembly (Privileges) Enactment 1959, learned counsel went at great length to persuade this court on the issue of immunity of the Legislative Assembly. Paragraph 3 of the said Schedule provides:

> No member shall be liable to any civil proceedings, arrest, imprisonment or damages by reason of any matter or thing, which he may have brought by petition, bill, resolution, motion or otherwise or have said before the Assembly or any committee.

[16] Counsel submits that by virtue of the said provisions, the act of the defendant in disqualifying the three plaintiff is immuned from court process and cannot be challenged in any court proceedings. It is suggested that the words in the said paragraph must be given a very wide meaning and be liberally interpreted and the word "otherwise" should not be read *ejusdem generis*. I must confess that the learned counsel's submission and reference to Erskine May's Treatise on the Law, Privileges, Proceedings And Usage of Parliament and the principle in *Bradlough v. Gosset* [1884] 12 QBD 271 is very enlightening. What is said or done within the walls of Parliament cannot be inquired into a court of law and the jurisdiction of the House over their own members, their right to impose discipline within their walls is absolute and exclusive. Considering the above, I do not think there is any departure in Article XXXIII of the Perak State Constitution and the said para. 3 of the Schedule of the Legislative Assembly (Privileges) Enactment 1959 from this principle. So is my reading of art. 72(1) of the Federal Constitution, which in my view is a reinforcement of the said para. 3 on the immunity from court process. It is also my view that both the authorities of *Fan Yew Ting*'s case and *Lim Cho Hock*'s case cited by the learned counsel uphold this very same concept of immunity. However the facts in *Fan Yew Ting* and *Lim Cho Hock* can readily be distinguished and therefore inapplicable to the instant case before me.

[17] I am in agreement with the submissions of the Honorable Attorney General that the act of the defendant in the instant case cannot be equated with a decision made before the Assembly or any committee. That very act of issuing the letters dated 2 February 2009 and 4 February 2009 to the Suruhanjaya Pilihanraya declaring a casual vacancy was not made before the Assembly or any committee within the meaning of the Enactment and the Perak State Constitution. The definition of Assembly under the Schedule means the Legislative Assembly and Legislative

Assembly under Article XX1X of the Perak State Constitution denotes a composition of 59 elected members. Similarly the word 'proceedings' in the Legislative Assembly referred to in art. 72(1) of the Federal Constitution must be read to be in reference to proceeding of the Assembly or any committee. Justice Lai Kew Chai in *Times Publishing Bhd & Ors v. S.Sivadas* [1984-1985] SLR 705 referred to *Erskine May's Parliamentary Practice* (20th edn) on the definition of the terms 'Proceedings in Parliament' and at p. 712 of the report, His Lordship stated:

> The primary meaning, as a technical parliamentary term, of 'proceeding' (which it had at least as early as the seventeenth century) is some formal action, usually a decision taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches its decision.

To adopt the approach suggested by the learned counsel in the interpretation of those words in para. 3 of the Schedule to the Enactment and the Constitution would in my view produce a meaning which goes against the very grain of those provisions and certainly against the intention of the legislature. I am not prepared to do that here.

[18] Considering the factual matrix of the case, it is crystal clear that the issue for determination before the court is the status of these plaintiffs as assemblymen/members of the Legislative Assembly. The defendant's act of declaring a casual vacancy to the Suruhanjaya Pilihanaraya cannot by any stretch of imagination be a decision of disqualification taken by the Assembly under Article XXXIII of the Perak State Constitution which decision shall be final and neither was it made before the Assembly or any Committee under para 3 of the Schedule to the Legislative Assembly (Privileges) Enactment 1959. In that respect, art. 72(1) of the Federal Constitution is in my view inapplicable. Accordingly, the defendant's attempt to strike out the action on those grounds is doomed to failure.

[19] On the issue of procedural impropriety and abuse of process, O. 53 of the RHC was cited by the learned counsel for the defendant as being the proper procedure to be adopted by the plaintiff in this action. The issue of private and public rights was put forth in argument and authorities were cited to convince me on the application of O. 53 and the remedies available under the

said order. I admire the eloquence of both counsels for the plaintiffs and the defendant on their respective arguments on O. 53 and the historical background to the said order citing cases both pre and post amendment of the said order. On the same issue, on behalf of the plaintiffs, it was submitted that s. 41 of the Specific Relief Act 1950 and O. 15 r. 16 of the RHC are relevant and applicable to their case in applying for the declaratory order in encl. 1. Be that as it may, I must caution myself that the issue before me at this stage of the proceeding is to consider whether or not the case is plain and obvious in deciding whether or not the matter ought to be struck out under O. 18 r. 19 of the RHC. In the circumstances of the case, it is my considered view that whether or not O. 53 or O. 15 r. 6 of RHC or s. 41 of the Specific Relief Act 1950 should apply is a matter which is more appropriate to be dealt with in the hearing of the substantive application in encl. 1 and not in this striking out application. Full ventilation on the applicability of O. 53 and the consideration of the authorities both pre and post amendment of O. 53 should be undertaken in that forum. So is the applicability of s. 41 of the Specific Relief Act 1950 and O. 15 r. 16 RHC (See: *Awang @ Harun b. Ishak & Ors v. Kerajaan Negeri Kedah & Ors* (Court of Appeal: Rayuan Sivil No. K-01-147-2006). *Times Publishing Bhd. Ors v. S. Sivadas (supra)*).

[20] Reminding myself again, I must not lose sight of the fact that this is an application under O. 18 r. 19 of the RHC and instinctively one can never ignore the principle laid down by the celebrated case of *Bandar Builders Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7. This is the *locus classicus* on the subject matter of striking out action. It is the plain and obvious case test or whether the claim or answer to it is on the face of it obviously unsustainable. Whether a case is plain and obvious does not depend on the length of time it takes to argue the matter (*Pengiran Othman Shah Pengiran Mohd Yusof & Anor v. Karambunai Resorts Sdn. Bhd & Ors* [1996] 1 CLJ 257.) Having considered the pleadings or rather the application of the plaintiffs in encl. 1 together with the affidavit and the arguments that has been put before me in hearing this application, I can only come to the conclusion that this case does not come within the category of plain and obvious case as envisaged in the *Bandar Builder*'s test. It is trite that the power to dismiss summarily under O. 18 r. 19 RHC is a drastic one and should be exercised with

caution. This court will certainly not willy nilly exercise that discretion and that discretion must be sparingly used (See: *Tractors Malaysia Bhd v. Tio Chee Hing* [1975] 1 LNS 133, *Seng Huat Hang Sdn. Bhd v. Chee Seng & Co. Sdn. Bhd* [1987] 1 MLJ 413). Further in considering whether a matter before the court is vexatious as claimed by the applicant/defendant in this case, the court in its inherent jurisdiction is entitled to look at affidavits as to the history of the matter and if in the light of the history the action is vexatious, the matter can be struck off and the action dismissed (See: *Re Vernazza* [1959] 2 All ER 200).

[21] On my close scrutiny of the case, I find that there is a complex and multiplicity of issues to be determined in the case. The applicability of O. 53, O. 15 r. 16 and s. 41 of the Specific Relief Act 1950, the interpretation of various Articles in the Perak State Constitution, the Federal Constitution and the Legislative Assembly (Privileges) Enactment 1959 and the issues of disqualification of the members of the Assembly and the immunity of the Assembly are all matters that require adjudication by the court. This is certainly not a plain and obvious case that can be disposed off by way of O. 18 r. 19 RHC. In the upshot, the application in encl. 6 is hereby dismissed and costs be awarded to the plaintiffs and the Suruhanjaya Pilihanraya (intervener).

[22] By way of a notation, I wish to place on record that the application in encl. 10 by the six proposed interveners was heard first on the application and agreement of all parties concerned. During the hearing of encl. 6, the learned counsel for the six proposed interveners was allowed to submit and be heard as an *amicus curae*.